

REMARKS

In view of the above amendments and the following remarks, Applicant

requests favorable reconsideration and allowance of the above-identified application.

Claims 1-3, 5, 6, 8 and 9 are now pending in this application, with Claims 1, 8 and 9 being independent. By this Amendment, Applicant has canceled Claim 4 and amended Claims 1, 3, 8 and 9.

Claim 1-6 stand objected to because of informalities. Applicant has amended those claims to attend to the matters indicated in the Office Action as giving rise to the rejection.

Claims 1-6, 8 and 9 stand provisionally rejected under the judicially created doctrine of double patenting over Claims 1-10 and 13-15 of copending Application No. 09/411,632. Applicant respectfully requests that the provisional double patenting rejection be held in abeyance until the claims are otherwise indicated as being allowable.

Claims 1-6 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,496,616 (Harris, et al. '616). Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,847,877 (Imamura, et al.) in view of U.S. Patent No. 5,214,535 (Harris, et al. '535). Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over Harris, et al. '535.

As recited in independent Claim 1, Applicant's invention is directed to a

diffractive optical element having a first diffractive optical part having a phase-type diffractive grating, and a second diffractive optical part having a phase-type diffractive grating, formed of a material different from that of the first diffractive optical part. Each of

the first and second diffractive optical parts has a mark for aligning them, with the mark being in an area where the diffractive grating is provided.

Independent Claim 8 is directed to a method of manufacturing a diffractive optical element. That claim recites features generally similar to those recited in independent Claim 1. Independent Claim 9 is directed to a metal mold for manufacturing a diffractive optical element. The mold includes a first area for molding a phase-type diffractive grating and a second area for molding a mark. The second area for molding the mark is provided in an area for forming the diffractive grating molded by the first area.

Harris, et al. '616 and Harris, et al. '535 are cited in the Office Action as describing aligning diffractive gratings using markings. Applicant, however, submits that these documents do not describe aligning diffractive optical parts using markings formed in areas where a diffractive grating is actually formed.

Imamura, et al. is merely cited as showing the use of first and second diffractive optical parts formed of different materials, with those diffractive optical parts being accumulated with a space therebetween. Applicant submits that this document fails to remedy the deficiencies discussed above with respect to Harris, et al. '616 and Harris, et al. '535.

Accordingly, Applicant submits that Harris, et al. '616, Harris, et al. '535, and Imamura, et al., taken alone or in combination, fail to disclose or suggest, at least, (i)

each of a first diffractive optical part and a second diffractive optical part having a mark for aligning them, the mark being in an area where the diffractive grating is provided, as recited in independent Claim 1; (ii) aligning a first diffractive optical part and a second

diffractive optical part with each other while observing a mark present in an area where the diffractive gratings are present on each of the first diffractive optical part and the second diffractive optical part, as recited in independent Claim 8; (iii) a first area for molding a phase-type diffractive grating and a second area for molding a mark for aligning the diffractive grating with another member, the second area being provided in an area for forming the diffractive grating molded by the first area, as recited in independent Claim 9.

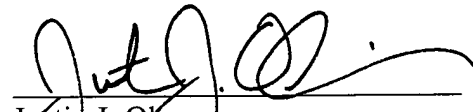
For the foregoing reasons, Applicant submits that the independent claims are allowable over the applied documents, and requests withdrawal of the rejections under 35 U.S.C. § 103.

The remaining claims in the present application are dependent claims which depend from the independent claims, and thus are patentable over the applied documents for reasons noted above with respect to those claims. In addition, each recites features of the invention still further distinguishing it from the applied patents. Applicant requests favorable and independent consideration thereof.

Applicant's undersigned attorney may be reached in our Washington, D.C.
office by telephone at (202) 530-1010. All correspondence should continue to be directed

to our below-listed address.

Respectfully submitted,


Justin J. Oliver
Attorney for Applicant
Registration No. 44,986

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

JJO/tmm